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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.104 OF 2007
IN
CRIMINAL APPLICATION NO.3606 OF 2006

Stock Holding Corporation of India Limited, Mumbai — Applicant

versus

1. Rameshchandra Biyani, Kolkatta.
2. State of Maharashtra — Respondents

Mr.P.D.Desai for petitioner.

Mr.N.K.Thakore i/by Prakash Naik for respondents.

CORAM : A.S.OKA, J.

DATE : 28th March 2007

PC :

1. Heard learned counsel appearing for the parties. The prayer in this criminal application in substance is for recalling the judgement and order dated 6th December 2006 passed in Criminal Application No.3606 of 2006.

2. The first respondent filed a revision application before the Sessions Court for challenging an order passed by the learned

Metropolitan Magistrate directing process to be issued on a complaint filed by the applicant herein. As there was a delay in filing the revision application, an application for condonation of delay was filed by the first respondent. By an order dated 8th September 2006 the learned Additional Sessions Judge, Mumbai allowed the application for condonation of delay and directed the office of the City Civil and Sessions Court to register the revision application. The order recorded in the Roznama shows that the delay was condoned and the revision application was dismissed.

3. Criminal Application No.3606 of 2006 was filed by the first respondent for challenging the order of learned Additional Sessions Judge by which revision application was dismissed.

4. By order dated 6th December 2006, this Court partly allowed the criminal application by setting aside the order dated 8th September 2006 and by directing the learned Additional Sessions Judge to hear the revision application afresh and to pass a reasoned order. The said order was passed on the ground that no reasons were assigned for dismissing the revision application

by the learned Additional Sessions Judge.

5. In the present application it is brought to the notice of this Court that a detailed and reasoned order was in fact passed on 8th September 2006 on revision application filed by the first respondent.

6. The submission of the learned counsel for the applicant in this application is that the order dated 6th December 2006 was passed by this Court as it was not brought to the notice of this Court that a separate judgement and order was delivered by the learned Additional Sessions Judge in the revision application and for reasons recorded therein, the revision application was rejected. Therefore, the prayer in this application is for recalling the order dated 6th December 2006.

7. I have considered the submissions of learned advocate for applicant. In paragraph no.3 of the order dated 6th December 2006 it is recorded that:-

> "3. There is no dispute between the learned Counsel for the parties that while dismissing the Revision Application filed by the applicant, no reasons have

been assigned by the learned Additional Sessions Judge. The Revision Application appears to have been dismissed on the very day on which the application for condonation of delay was allowed by passing a reasoned order. The learned counsel for the first respondent submits that the submissions on delay condonation application and revision application were heard together. Even if the learned Judge has heard the revision application along with the application for condonation of delay, he could have disposed of the revision application on merits only after assigning reasons. That has not been done in this case and the revision application has ben dismissed by passing a single line non speaking order."

8. In the present application, the applicant has alleged in paragraph no.8 that :-

"8) It is submitted that the said Criminal Revision Application No.1086 of 2006 was heard and disposed of by the Ld. Sessions Judge by passing a detail order assigning the reason therein. The Respondent No.1, herein, merely obtained a copy of Roznama and made a submission on the basis of the same that the said Revision Application was not heard on merits and that the Ld. Sessions Judge dismissed the Revision Application without assigning any reason. The said submission was false to the knowledge of the Respondent No.1 herein since the Revision Application was argued on merits, the Judgement was also cited across the bar by the Ld. Advocate for the petitioner herein in support of his submission and prayed for dismissal of the Revision Application of Respondent No.1 herein."

It must be noted here that even the learned counsel appearing for the applicant herein made a statement on 6th December 2006 before this Court that the learned Additional Sessions Judge has not assigned any reasons for rejecting the revision application filed by the first respondent. Till today no grievance has been made on behalf of the applicant that the statement to that effect recorded in paragraph no.3 of the order dated 6th December 2006 passed by this Court is incorrect. Thus, it appears to me that both the parties were not aware on 6th December 2006 that a separate judgement and order was delivered by the learned Additional Sessions Judge in criminal revision application recording detailed reasons for rejecting the same.

9. It is true that under the provisions of Code of Criminal Procedure, 1973 there is no specific power of review. However, in the case of State of Andhra Pradesh Vs. Golconda Linga Swamy and another reported in (2004)6-SCC-522 the Apex Court has observed as under :-

> "... ... ... All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as

> are necessary to do the right and to undo a wrong in course of administration of justice on the principle quande lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist"). ... ..."

10. In the present case, when the order dated 6th December 2006 was passed by this Court, both the contesting parties were not aware that the revision application has been decided by a separate reasoned judgement. Therefore, the order dated 6th December 2006 proceeds on the assumption that no reasons have been recorded by the learned Additional Sessions Judge for rejecting the revision application. Now, it is pointed out that what was argued before this Court on 6th December 2006 is factually incorrect. Therefore, the order dated 6th December 2006 deserves to be recalled. Hence, I pass the following order.

11. ORDER :-

(a) The order dated 6th December 2006 is recalled and Criminal Application No.3606 of 2006 is restored to the file of this Court;

(b) The office is directed to place the said criminal application for admission before the appropriate Court taking up such application for

admission;

(c) The applicant is allowed to amend the Criminal Application No.3606 of 2006 for adding grounds and for annexing a true copy of the order passed in Revision Application within a period of four weeks from today.

(A.S.OKA, J.)